

(2) *Isolated deficiencies.* A facility is not required to submit a plan of correction when it has deficiencies that are isolated and have a potential for minimal harm, but no actual harm has occurred.

(e) *Disagreement regarding remedies.* If the State and CMS disagree on the decision to impose a remedy, the disagreement is resolved in accordance with § 488.452.

(f) *Notification requirements*—(1) Except when the State is taking action against a non-State operated NF, CMS or the State (as authorized by CMS) gives the provider notice of the remedy, including the—

- (i) Nature of the noncompliance;
- (ii) Which remedy is imposed;
- (iii) Effective date of the remedy; and
- (iv) Right to appeal the determination leading to the remedy.

(2) When a State is taking action against a non-State operated NF, the State's notice must include the same information required by CMS in paragraph (f)(1) of this section.

(3) *Immediate jeopardy—2 day notice.* Except for civil money penalties and State monitoring imposed when there is immediate jeopardy, for all remedies specified in § 488.406 imposed when there is immediate jeopardy, the notice must be given at least 2 calendar days before the effective date of the enforcement action.

(4) *No immediate jeopardy—15 day notice.* Except for civil money penalties and State monitoring, notice must be given at least 15 calendar days before the effective date of the enforcement action in situations in which there is no immediate jeopardy.

(5) *Date of enforcement action.* The 2- and 15-day notice periods begin when the facility receives the notice.

(6) *Civil money penalties.* For civil money penalties, the notices must be given in accordance with the provisions of §§ 488.434 and 488.440.

(7) *State monitoring.* For State monitoring, no prior notice is required.

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#### § 488.404 Factors to be considered in selecting remedies.

(a) *Initial assessment.* In order to select the appropriate remedy, if any, to apply to a facility with deficiencies, CMS and the State determine the seriousness of the deficiencies.

(b) *Determining seriousness of deficiencies.* To determine the seriousness of the deficiency, CMS considers and the State must consider at least the following factors:

(1) Whether a facility's deficiencies constitute—

- (i) No actual harm with a potential for minimal harm;
- (ii) No actual harm with a potential for more than minimal harm, but not immediate jeopardy;
- (iii) Actual harm that is not immediate jeopardy; or
- (iv) Immediate jeopardy to resident health or safety.

(2) Whether the deficiencies—

- (i) Are isolated;
- (ii) Constitute a pattern; or
- (iii) Are widespread.

(c) *Other factors which may be considered in choosing a remedy within a remedy category.* Following the initial assessment, CMS and the State may consider other factors, which may include, but are not limited to the following:

- (1) The relationship of the one deficiency to other deficiencies resulting in noncompliance.
- (2) The facility's prior history of noncompliance in general and specifically with reference to the cited deficiencies.

#### § 488.406 Available remedies.

(a) *General.* In addition to the remedy of termination of the provider agreement, the following remedies are available:

- (1) Temporary management.
- (2) Denial of payment including—
  - (i) Denial of payment for all individuals, imposed by CMS, to a—
    - (A) Skilled nursing facility, for Medicare;
    - (B) State, for Medicaid; or
  - (ii) Denial of payment for all new admissions.
- (3) Civil money penalties.
- (4) State monitoring.
- (5) Transfer of residents.
- (6) Closure of the facility and transfer of residents.